92-413

Supreme Court, U.S.
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No.

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1991

HUGHES BRAILEY, pro se,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
FIRST JUDICIAL DISTRICT,
FOURTH DIVISION.

PETITION FOR WRIT OF CERTIORARI

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September 1, 1992

A.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Illinois Appellate Court has a duty to ensure the right of judicial review of the administrative record on judicial enforcement of a State administrative criminal sanction.

2. Whether the State of Illinois has the right and authority to convict a defendant of an administrative crime where the Agency procuring the charge has violated requirements of the State Administrative Procedure Act for procedure in a contested case.

3. Whether the unenfranchised natural individual and his rights under the common law are the lawful object of the Illinois Income Tax Act.

4. Whether the State has the authority to forcibly appoint counsel upon a defendant, who against his objections work against his

Constitutional rights.

5. Whether a State criminal court judge has authority to confer jurisdiction to another judge to hold trial when the mandate from a prior appeal in the same case from an order statutorily designated as a "final order for purposes of appeal" has not yet issued.

TABLE OF CONTENTS

PAGE

A. QUESTIONS PRESENTED FOR REVIEW i

B. TABLE OF CONTENTS 1

C. REFERENCE TO LOWER COURT OPINIONS 2

D. JURISDICTIONAL STATEMENT 3

E. CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS 4

F. STATEMENT OF THE CASE 7

G. ARGUMENT 25

H. APPENDIX 41

ORDER OF THE ILLINOIS APPELLATE COURT DENYING PETITION FOR REHEARING ..... a- 19

ORDER OF THE ILLINOIS SUPREME COURT DENYING PETITION FOR LEAVE TO APPEAL ..... a- 20

C.

REFERENCE TO LOWER COURT OPINIONS

Final judgement and opinion
of the Appellate Court of Illinois,
First District, Fourth Division..... a- 1

Final judgement of conviction
and opinion of the Cook County
Circuit Court.....a- 16

Order of the Illinois Appellate
Court denying Petition For Rehearing
..... a- 19

Order of the Illinois Supreme
Court denying Petition For
Leave to Appeal ..... a- 20

D.

JURISDICTIONAL STATEMENT

The date of entry of the judgement of the the Illinois Appellate Court sought to be reviewed is November 27, 1991.

A Petition for Rehearing was filed and subsequently denied on January 30, 1992.

A Petition for Leave to Appeal the judgement of the Illinois Appellate Court was filed in the Illinois Supreme Court on February 28, 1992, and denied on June 3, 1992.

The statutory provision believed by Petitioner Hughes Brailey to confer jurisdiction on this Court to review the judgement in question by writ of certiorari is 28 U.S.C., § 1257, "State courts; certiorari".

E.

CONSTITUTIONAL PROVISIONS,

STATUTES AND REGULATIONS

1st Amendment right to petition government for redress of grievances. ..... Page 25

Article IV U.S. Constitution, section 2; "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Page 30

4th Amendment right of privacy. .... Page 31

5th Amendment right against self incrimination, and for due process and just compensation for private property taken for public use. ..... Page 31

9th Amendment implied acknowledgement of inalienable rights and immunities residing in the common law and law merchant as being retained by the people; "The enumeration in the Constitution of certain rights, shall

not be construed to deny or disparage others retained by the people." ... Page 25

13th Amendment right against involuntary servitude. ..... Page 35

Illinois Revised Statute chapt. 120, the "Income Tax Act", sect. 13-1301: "Willful and Fraudulent Acts. Any person who is subject to the provisions of this Act and who willfully fails to file a return, or to keep books and records as required herein, or who files a fraudulent return, or who willfully violates any rule or regulation of the Department for the administration and enforcement of the provisions of this Act, or who willfully attempts in any other manner to evade or defeat any tax imposed by this Act or the payment thereof shall, in addition to other penalties, be guilty of a Class 4 felony for the first offense and a Class 3 felony for each subsequent

offense. .....*** " ... Page 7

Ill. Rev. Stat. chapt. 127, The Illinois Administrative Procedure Act, sect. 1014, "Decisions and orders": "A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases except to the extent such provisions are waived pursuant to Section 18 of this Act and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 2 of this Act."

..... Page 28

Ill. Rev. Stat. chapt. 38, sect. 104-16(e), "Fitness Hearing": "An order finding the defendant unfit is a final order for purposes of appeal by the State or the defendant." ..... Page 38

Ill. Rev. Stat. chapt. 110A, "sect. - rule

369(b): "Filing of Mandate in Circuit Court and Proceedings Thereafter -- Dismissal or Affirmance: When the reviewing court dismisses the appeal or affirms the judgement and the mandate is filed in the circuit court, enforcement of the judgement may be had and other proceedings may be conducted as if no appeal had been taken." ... Page 39

Ill. Rev. Stat. chapt. 120, Income Tax Act, sect. 3-303(e)(1), "Taxability in other state: For purposes of allocation of income pursuant to this Section, a taxpayer is taxable in another state if:

(1) In that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax: or ....***....." ..... Page 30

F.

STATEMENT OF THE CASE

A. Nature of the Case.

This petition for writ of certiorari is brought by Petitioner Hughes Brailey, pro se, seeking review of the judgement of the Appellate Court of Illinois, First District, Fourth Division, affirming the order of conviction of Brailey by the Cook County Illinois Circuit Court for failure to file an Illinois income tax return.

B. Statement of Facts.

Petitioner Hughes Brailey was charged by indictment filed on April 4th 1986 with failure to file an Illinois income tax return, Ill. Rev. Stat. chapt. 120, sect. 13-1301, brought by the Illinois Department of Revenue. Brailey was arraigned on May 1, 1986. Once in the enforcement court of Judge Joseph Urso to whom the case was originally assigned to, Petitioner Brailey

was asked in open court on May 1, 1986 by Judge Urso: "Are you represented by a lawyer here today, Mr. Brailey?

MR. BRAILEY: No. I want to represent myself pro se, but when it appears necessary I would like to have the availability of counsel, but I want to present my case.

THE COURT: Well, how about if I appoint a Public Defender to represent you and you can talk to him?

MR. BRAILEY: So long as they do not prevent me from speaking and being heard when I feel necessary." .....(Record page no. 7, starting at line 9).

Prior to this open court hearing, off the record, Brailey had been told by public defender David Eppenstein that "Judge Urso does <u>not</u> allow <u>any</u> defendant to appear pro se in his courtroom because a criminal trial is too serious to allow an inexperienced defendant to defend himself. Brailey mentioned this fact on the record in his

Objections to Public Defender Being Forced Upon Defendant, filed in Judge Urso's court on August 10, 1987. (a- 38). Having been told in advance of Judge Urso's intolerance of pro se representation, Brailey only suggested as a means of compromise that he would be willing to accept some counseling. Brailey, as defendant at that time was very inexperienced in legal pleading and likewise very nervous.

On May 29, 1986, Brailey filed a crude petition for judicial review in Judge Urso's courtroom labeled "Defendant's Motion to Dismiss Upon Judicial Review, Within a Special and Limited Hearing", whereby he raised the issues of judicial review, want of jurisdiction by the Illinois Income Tax Act/Illinois Department of Revenue over his person, and lawfulness - enforceability of the charge against him. (a- 21 thru a- 23). Public Defender David Eppenstein sought to have Brailey's

"petition" withdrawn. (a- 31 & 32). Judge Urso subsequently denied the petition contending that it was of absolutely no merit, claiming that his court had jurisdiction over Brailey regardless of administrative procedure prior to the rendering of the charge,, that "it is not necessary for the government to proceed administratively on this before they proceed in filing criminal sanctions.", even though Brailey had pointed out that the charge arose as a final order in a contested case at the administrative level on the issue of Agency jurisdiction over his person. (a- 33 & 34).

On November 13, 1986 Petitioner Brailey as Defendant in Judge Urso's courtroom filed a "Motion For Judicial Review" (a- 24 & 25), again raising the question of whether the charge of failure to file had been brought under lawful Agency procedure. On April 6, 1987, Brailey filed another "Mo-

tion For Judicial Review" which provided more supporting statutes and also court decisions to better explain and verify his position that Urso's enforcement court must review the administrative record, but to no avail, and Brailey was thereafter found unfit to stand trial by Judge Urso and subsequently incarcerated at Elgin Mental Health Center for 1 year. (a- 35 thru 37).

Prior to his incarceration at Elgin Mental Health Center, Brailey was granted leave by the Illinois Appellate Court, First District, Fourth Division, to file an appeal from the unfit order approximately 30 days beyond the normal 30 day filing time specified for such an appeal. Brailey notified Judge Urso that not only had he commenced an appeal of/from the unfit order, but also showed the Judge the Illinois Appellate Court order granting leave to file the appeal late, but to no avail, and Judge Urso had Brailey involuntarily

committed to Elgin.

As the Judgement/Opinion of the Illinois Appellate Court (a- 1 thru 15) confirms, after 1 year at Elgin Mental Health Center, Brailey was returned to Judge Urso who then found him fit to stand trial, and immediately thereafter Urso recused himself and the case was transferred to Judge Daniel Kelley on May 4, 1989, whereupon Defendant Brailey asserted his right to defend himself. (Transcript-record page no. 459 starting at line 3):

" MR. BRAILEY: Also if I might at this time point out that today I just got my first notice of a motion filed by the State to bar me from, you know, pleading not guilty, having certain defenses, and I would like to have the opportunity and time to file a response and objections to this motion because they filed it with the Public Defenders Office that's been forcibly appointed on me, and I have my own

-- you know, all my --

THE COURT: Hold on one second, Mr. Brailey. Let's start at the very beginning.

You do not wish the services of the Public Defender?

MR. BRAILEY: No, sir.

THE COURT: You do not wish the services of an attorney?

MR. BRAILEY: No, sir.

THE COURT: You wish to represent yourself?

MR. BRAILEY: Yes. I have my own defense and verification and authorization for all my points, statutes, case law. ..." As the Judgement/Opinion of the Illinois Appellate Court verifies, Judge Kelley, as Judge Urso then decided to deny Brailey freedom to defend himself without the public defenders.

On May 31, 1989, Brailey cautiously filed a Petition For Judicial Review in

Judge Kelley's court (a- 26 thru 30) raising all of the same issues raised in Judge Urso's courtroom: the 1st Amendment right of judicial review (due process/right of appeal), lawfulness - enforceability of the criminal charge, and the question of Agency jurisdiction over the person of Hughes Brailey. Like Judge Urso, Judge Kelley denied that the proceeding in substance is a review of the administrative record. (Transcript-record page no. 475):

MR. BRAILEY: This is review.

THE COURT: This is not a review. This is trial. Your charged with a criminal offense? ...."

Judge Kelley in open court declared that he was denying Brailey's Petition For Review. (Transcript-record no. 105):

THE DEFENDANT: Are you going to deny my petition for administrative review?

THE COURT: Yes, I am.

THE DEFENDANT: That's a Constitutional

right, I declare and believe.

THE COURT: Okay. You will have a right to appeal any decisions I have made.

THE DEFENDANT: That's right. Yes, sir.

THE COURT: At this point however, I'm going to deny that request. ....."

Petitioner Brailey, as defendant in Judge Kelley's courtroom prior to trial for enforcement of failure to file, informed Judge Kelley that the mandate from the appeal from the unfit order had not yet then been filed. (Transcript-record page no. 493):

"THE DEFENDANT: ****

The Appellate Court on June 9th of 1988 handed down a real adverse opinion, they affirmed Urso's unfitness order on June 9th of '88, but to my knowledge no mandate has ever come down and there-- the mandate was not filed with the clerk of this court and you know, the record hasn't

been sent down.

If they have the indictment, you know, the original indictment, how can I appeal?

THE COURT: Well I have a copy of the original indictment. ....."

Trial for enforcement of failure to file with a finding of guilt by Judge Kelley occurred on August 28, 1989. On September 18, 1989, prior to the September 25 1989 sentencing date, Brailey filed his "Motion for Arrest of Judgement" with Judge Kelley's court, whereby the statutorily designated finality of an unfit order on appeal was raised, and also again before Judge Kelley the fact that the mandate from the appeal from the unfit order had not yet issued at the August 28 1989 trial date. (Motion for Arrest of Judgement, paragraph 4): "As a <u>final</u> order on appeal an unfit order is the last order the trial court has

jurisdiction to make while the Appellate Court has jurisdiction until the mandate is filed in the Circuit Court. Illinois Supreme Court Rule 369(b) unambiguously states: "When the reviewing court dismisses the appeal or affirms the judgement and the mandate is filed in the circuit court, enforcement of the judgement may be had and other proceedings may be conducted as if no appeal had been taken." Therefore, Defendant Brailey firmly believes that among all the other orders entered by the Circuit Court since his appeal was granted, the transfer of the case from Judge Urso's courtroom and the trial that was conducted by this Court were without regard for lawful appellate procedure."

Brailey also pointed out to Judge Urso in open court before his recusal, the statutory finality of his unfit order on appeal. (a- 41).

On appeal from Judge Kelley's order of

conviction and sentencing in the Illinois Appellate Court, Petitioner Hughes Brailey in his Brief of Defendant-Appellant, under Argument stated:

"1. Cook County Circuit Court Judge Joseph Urso did not have authority/jurisdiction to recuse himself from Trial Case No. 86 CR 4373 and have it transferred to Judge Daniel Kelley for to hold trial for enforcement of the charge while this Appeals Court yet had appellate jurisdiction over said case in Appeal No. 87-2723, which argument also runs to the fact/contention that Judge Daniel Kelley did not have jurisdiction over the cause of action alleged by the State.

2. The Circuit Court did not have authority to forcibly appoint hostile public defenders as counsel for Defendant Brailey.

3. The Circuit Court of Judge Joseph Urso has/had a duty to judicially review the

administrative record, and if Judge Daniel Kelley did have jurisdiction over the cause of action, his court had/has a duty to judicially review the administrative record.

4. The charge of Ill. Rev. Stat. chapt. 120, sect. 13-1301 is VOID.

Upon a lawful review of the administrative record there shall be revealed the facts that the Illinois Department of Revenue failed to abide by/honor the provisions of the Illinois Administrative Procedure Act for procedure in a contested case wherein Agency jurisdiction over the person of Petitioner-Defendant Brailey was affirmatively, with verification/authorities, on the administrative record, pleaded and proven not to exist, and where Brailey had demanded of Agency a formal hearing on said issue which was denied, and wherein Agency denied Brailey essential due process

in their failure to render judgement in his favor on said issue of jurisdiction. .....

5. Jurisdiction of the Illinois Department of Revenue/Illinois Income Tax Act/Cook County Circuit Enforcement Court over the person of Defendant Brailey does not exist which fact/argument also runs to the fact that he is entitled to summary judgement on the merits of his administrative pleadings on the issue of jurisdiction in his favor, or in the alternative, default judgement."

As the Judgement/Opinion of the Illinois Appellate Court indicates, said Appellate Court ignored all of the issues raised therein. In Brailey's Petition For Rehearing filed in the Illinois Appellate Court, in "Points Overlooked", the same were reiterated, but to no avail - relief. The order of the Illinois Appellate Court denying rehearing can be seen at (a- 19).

Thereafter Brailey petitioned the Illinois Supreme Court for Leave to Appeal the adverse judgement of the Illinois Appellate Court, and in his Petition For Leave to Appeal, under "Points Relied Upon For Reversal", he stated:

"1. That Circuit Court Judge Joseph Urso who was originally assigned to the case did not have authority to recuse himself from said case for enforcement of the charge of failure to file an Illinois income tax return in the Circuit Court and have it transferred to Judge Daniel J. Kelley to hold trial for enforcement of the charge while the Illinois Appellate Court yet had appellate jurisdiction over said case in Appeal No. 87-2723 which was an appeal from a statutorily designated <u>final</u> order <u>for purposes of appeal</u>, and thus Judge Daniel J. Kelley did not have jurisdiction over the cause of action alleged by the State so

in order to hold trial even if Defendant Brailey hypothetically would be subject to the provisions of the Illinois income tax act.

2. That the Illinois Appellate Court has failed to ensure Brailey's U.S. Constitution 1st Amendment right to petition for redress of grievance via his petitioning in the enforcement court for judicial review of the administrative adjudication and procedure which procured the charge of administratively decided failure to file as a final order in a contested case on the crucial issue of Agency jurisdiction over the person of Defendant-Appellant Brailey, and thus lawfully determine and secure his other Constitutional rights such as due process; the 4th amendment right of privacy - protection from from undue governmental governmental intrusion; 5th amendment right against self incrimination and right to

just compensation; common law immunity from taxation of common law rights; etc. .

3. That the charge of administratively decided failure to file an Illinois income tax return, Ill. Rev. Stat. Chapt. 120, sect. 13-1301 is VOID for want of jurisdiction by the Illinois Department of Revenue over the person of Hughes Brailey, and also for the Department's failure to abide by the provisions of the Illinois Administrative Procedure Act for lawful procedure (due process, etc.) in a contested case on the paramount crucial issue of Agency jurisdiction over the person of Hughes Brailey as affirmed - codified by Ill. rev. Stat. Chapt. 127, sect. 1014.

4. That the Illinois Department of Revenue/Cook County Circuit enforcement Court, etc. does not have jurisdiction over the person of Defendant-Appellant Hughes Brailey, and as he has affirmatively plead-

ed and proven so on the administrative record prior to the Department's entry of their criminal sanction of failure to file he is entitled as a matter of essential due process to summary judgement in his favor on the issue of jurisdiction, or in the alternative, default judgement. (Ill. Rev. Stat. Chapt. 120, sect. 3-303(e)(1), etc.)

5. That the Circuit Enforcement Court does not have authority to forcibly appoint hostile public defenders as counsel for Defendant Brailey."

The Illinois Supreme Court then subsequently denied Brailey's Petition For Leave to Appeal. (a- 20).

As portions of the State record quoted herein this Petition show, Brailey raised before all the State courts the issue of his being entitled as part of judicial review to summary judgement in his favor on the issue of jurisdiction.

G.

ARGUMENT

1. The Illinois Appellate Court is bound by the Supreme Law of the Land to ensure Petitioner Hughes Brailey's 1st Amendment right to petition government for redress of grievances through his petitioning for judicial review in the State enforcement court hearing an administratively decided criminal sanction, and thus also thereby lawfully secure his other Constitutional rights such as essential due process; the 4th Amendment right of privacy from undue governmental intrusion into private, common law affairs; 5th Amendment right against self incrimination, and right to just compensation for all private property taken by government for public use; the 9th Amendment common law and law merchant rights impliedly recognized as inalienable rights secured by the people, and as they

forbid the direct taxation and regulation and associated destruction of the unenfranchised natural individual and his rights under the common law. As the Illinois Department of Revenue is statutorily delegated with primary adjudicatory jurisdiction for all of their rules including their criminal sanction of Failure to File, Ill. Rev. Stat. chapt. 120, sect. 13-1301, on judicial enforcement of said criminal sanction the enforcement court cannot assume having jurisdiction over the defendant, and having lawful enforceability of the charge once the defendant has filed a petition for review indicating to the contrary, without first reviewing the whole administrative record of proceeding which procured the charge.

Prior to the entry - filing for indictment by the Illinois Department of Revenue for enforcement of their criminal sanction as their first final adverse order in a

contested case on the issue of jurisdiction over the person of Hughes Brailey, neither the Illinois Department of Revenue nor the Internal Revenue Service, U.S.A. had ever up to that time issued a Notice of Deficiency, which would have provided Brailey with exclusive opportunity for judicial review. Therefore, as Brailey had been denied such exclusive opportunity for review through issuance of a Notice of Deficiency letter by the Department, and the criminal sanction of failure to file an Illinois income tax return was the first final adverse order in his administrative contested case on the crucial paramount issue of jurisdiction, the enforcement court of Judge Urso had jurisdiction for review, and as Brailey otherwise is left with absolutely no remedy - recourse for acquiring his right of review.

2. The State of Illinois has no right and

authority to convict a defendant of an administrative crime where the Agency procuring the charge has violated pertinent provisions of the State Administrative Procedure Act for procedure in a contested case on the issue of jurisdiction over the person of the defendant. Illinois Revised Statute chapt. 127, the Administrative Procedure Act, sect. 1014, "Decisions and Orders", unambiguously states: "A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases ....***...." The criminal sanction of failure to file for which Brailey was convicted entered as a first final adverse order of the Department of Revenue in a contested case on the issue of jurisdiction over his person by the Department, wherein the Department, upon receiving notice and opportunity failed to overcome

the weight of affirmative evidence filed by Hughes Brailey countering their assertions of jurisdiction over him, and thus establish a prima facie case in support of their pretended jurisdiction. One of the first principles of the law of agency is that he who asserts jurisdiction, must prove jurisdiction, and the Administrative Procedure Act well codifies this principle. If a State administrative agency cannot abide by the fundamental principles and rules of administrative/Constitutional procedure, and prove jurisdiction when it is required by law to do so, then it is certainly not entitled to seek and acquire judicial enforcement of its criminal sanctions, and certainly as likewise, the enforcement court has no authority to enforce a criminal sanction under such circumstances.

3. The unenfranchised natural individual

and his rights under the common law are not the lawful object of the Illinois Income Tax Act. Ill. Rev. Stat. chapt. 120, sect. 3-303(e)(1), "Taxability in other state.", states: "...***...a taxpayer is taxable in another state if: (1) In that state he is subject to net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax: ...***..." This statute expressly refers to "income tax" as being "franchise tax", and evidences that all states besides the state of Illinois are <u>limited</u> to taxing the incomes of only corporate/quasi corporate entities - persons conducting business in an extra-common law capacity of state created privilege and thus whereby common law immunity does not exist. Article IV U.S. Constitution, section 2, states: "The citizens of each state shall be entitled to all privileges and <u>immunities</u> of citizens in

the several states." Therefore, if all other states besides the State of Illinois are limited to taxing only the incomes of extra common law entities wherein said states have a rational basis for asserting liability measured by income, and likewise a legitimate interest therein, then the State of Illinois is so likewise limited, and with the affirmance of Article IV, U.S. Constitution, Section 2.

Enfranchisement of the otherwise free natural individual under the realm and immunity of the common law, whether by the state or the Federal governments can not occur absent the waiver of certain basic Constitutional - common law rights limiting the power of government in a free society, such as the 4th Amendment right against government intrusion into private affairs and the 5th Amendment right against self incrimination. Therefore on this basis alone a person cannot be forced to be

lawfully enfranchised and thereby taxable, regulateable and destroyable by government as in a manner never intended by the Founding Forefathers for the free unenfranchised natural individual. Likewise, the Founders never contemplated the unenfranchised free natural individual under the common law being subject to the jurisdiction and power to destroy of administrative tribunals, as such power is proper only where government has a legitimate interest, such as in those who seek extra common law favors, gifts from government, and thus whereby such persons have a duty - liability to <u>return</u> a portion of their gains made while enjoying state created privilege.

Furthermore Petitioner Hughes Brailey has shown the Illinois Department of Revenue, on the administrative record via recent case law that the law merchant governs in tax issues relating to the validity, liability of franchises. The law

merchant holds that a person can be held liable to a contract only to which he is a knowing, willing and intentional participant therein. Petitioner Brailey long ago was told that in order to work he must have a Social Security number, so under duress and lacking full knowledge of the liabilities accompanying involvement in Social Security, and the waiver - loss of Constitutional rights, he obtained such a number, yet he has on both the Internal Revenue Service, U.S.A. and Illinois Department of Revenue administrative record affirmed that said contract is void. Brailey understands that a persons failure to present such objections at the administrative levels leave the reviewing courts as well as administrative agencies no other choice than to assume jurisdiction, assuming that one is a lawfully willing, knowing and intentional participant in such franchises, and thereby the lawful object

of and subject to income taxation, regulation and associated power of destruction.

As Petitioner Brailey has pointed out, prior to the entry by the Department of Revenue of their State criminal sanction, neither the Department or the Internal Revenue Service, U.S.A. had ever issued a Notice of Deficiency, thereby enabling Brailey to seek and acquire review and lawful settlement of the issue of jurisdiction before being brought to the State enforcement court. Furthermore, the I.R.S. had never sought enforcement of Federal failure to file charges which would have allowed judicial review on the ground that exclusive review by way of the issuance of a Notice of Deficiency letter had been denied. Therefore, as the State of Illinois has used allegations by the I.R.S., U.S.A., Brailey holds such to be in error and entitled to review thereover, yet up to

the entry by the Illinois Department of Revenue of their final order for enforcement of failure to file which terminated the contested case on the issue of State income tax jurisdiction, Brailey had absolutely no means of acquiring a Federal review of his I.R.S. administrative record. Yet nonetheless, as Brailey has stated on the State administrative record, a state tribunal or court does not have jurisdiction to adjudicate on a Federal tax matter.

Petitioner Hughes Brailey firmly believes that the 13th Amendment right against involuntary servitude comes into play in his individual case regarding income tax, for while a person volunteering money to government on his own free will is one thing, a person being forced to give government money, property where there is no legal basis, in his opinion constitutes nothing less than "involuntary servitude".

The mind, and the labor, and the wages received in compensation therefore, of a free man belong to no one but himself. Yet even further beyond the importance of the concept of involuntary servitude is the concept/issue of whether government has the lawful power to convict/imprison/destroy based on the common law right to work and receive common law wages therefore, and in such a manner absent the nexus of state created privilege being a prerequisite, where if one simply chooses not to labor, he cannot be ruined by way of conviction, but simply because he does choose to labor and be compensated without filing for and paying a tax therefore, he then, necessarily based on his choice to exercise a God given common law right for survival, becomes destroyable at the hands and leisure of the state.

Petitioner Brailey is not only concerned for his personal fate and future

as he has been unjustly convicted by the State of Illinois, but also the fate and future of the United States, for as a result of widespread ignorance of the law by most Americans, and accompanying fear, he sees those in government who seek unlimited power and control of government over the people's lives able to slowly but surely realize the goal of creating a form and size of government totally alien to the good thought and intent of the Founding Forefathers. Brailey firmly believes that the illumination of truths in his tax case before the American people can help stave off the present ominous trend in American life.

4. The State does not have authority to forcibly appoint counsel upon a defendant, who against his objections work against his Constitutional rights.

5. A State criminal court judge does not

have authority to confer jurisdiction to another judge to hold trial when the mandate from a prior appeal in the same case from an order statutorily designated as a "final order for purposes of appeal" has not yet issued, and therefore, the conviction resulting from said trial, on this point standing alone, is null and void. Ill. Rev. Stat. chapt. 38, sect. 104-16(e), "Fitness Hearing", states: "An order finding the defendant unfit is a final order for purposes of appeal by the State or the defendant." Before the Illinois Appellate Court had divested itself of its appellate jurisdiction in Appeal No. 87-2723, (appeal from Judge Urso's unfit to stand trial finding of Hughes Brailey as defendant in State criminal case No. 86-CR-4373), by filing the mandate from said appeal in the criminal court clerk's office, Judge Urso had the case for enforcement of failure to file

tranferred to Judge Daniel Kelley to hold trial for enforcement. Up to the very date that Hughes Brailey was subsequently convicted for failure to file in Judge Kelley's courtroom, the mandate from Appeal No. 87-2723 had not yet issued, therefore, the transfer of the case to Judge Kelley, the trial, and conviction and sentence were all null and void based on this point standing alone. Ill. Rev. Stat. chapt. 110A, sect. - Rule 369(b), "Filing of Mandate in Circuit Court and Proceedings Thereafter -- Dismissal or Affirmance" states: "When the reviewing court dismisses the appeal or affirms the judgement and the mandate is filed in the circuit court, enforcement of the judgement may be had and other proceedings may be conducted as if no appeal had been taken." In Brailey's case "enforcement of the judgement" means enforcement of the judgement of unfit to stand trial. "Other proceedings" which may

be conducted as if no appeal had been taken in Brailey's particular case would only apply to the actions subsequent to enforcement of the unfit for trial judgement, which include transfer - recusal of the case to Judge Kelley, trial, conviction and sentencing. As said "other proceedings" occurred prior to the filing of the mandate in the circuit court, they were void of lawful authority and respect for lawful appellate procedure.

WHEREFORE, Petitioner Hughes Brailey respectfully prays that this Honorable Supreme Reviewing Court of the United States will grant this Petition for Writ of Certiorari to the Appellate Court of Illinois, First District, in criminal Appeal No. 1-89-2894.

September 1, 1992: Hughes Brailey

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FOURTH DIVISION
November 27, 1991

No. 1-89-2894

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	)	Appeal from the Circuit Court of Cook County.
v.	)	No. 86-CR-4373
HUGHES BRAILEY, Defendant-Appellant.	)	Honorable Daniel J. Kelley, Judge Presiding.

ORDER

Following a bench trial, defendant Hughes Brailey was found guilty of willfully failing to file an Illinois income tax return for the year 1984. He was sentenced to one year probation which the court considered served through his involuntary admission in a State mental

health facility. He was also ordered to pay $142.14. His pro se brief raises the following issues: (1) whether Judge Joseph Urso had the authority to recuse himself and transfer the case to Judge Daniel J. Kelley; (2) whether the court had subject matter jurisdiction to hear the case; (3) whether the trial court had the authority to appoint counsel to represent defendant; (4) whether jurisdiction was void; and (5) whether jurisdiction over his person exists which "also runs to the fact that he is entitled to summary judgement on the merits of his administrative pleadings on the issue of jurisdiction in his favor, or in the alternative, default judgement."

Prior to trial, defendant was found unfit to stand trial after a hearing conducted by Judge Urso. After several attempts to allow defendant to receive out-patient treatment had failed, the judge ordered defendant to be involuntarily com-

mitted to a State mental health facility. Defendant appealed the finding of fitness to this court which denied his request to stay the judgement of the trial court. This court subsequently affirmed the trial court's ruling that defendant was unfit to stand trial in an unpublished order. Prior to the mandate issuing, defendant was found fit to stand trial. After finding defendant fit, Judge Urso indicated that he was recusing himself, stating:

> "Before making any rule on this, I think that the Judge who -- the Court is going to recuse itself on this case. I have been sued in various courts by Mr. Brailey during the pendency of this matter, including the Supreme Court, before the Chief Judge, including the Court of Chancery, and there may have been a civil court; plus, it has gone up to various Appellate

sections. This was while the question of fitness was pending. I was affirmed or upheld in all those courts. I think under the circumstances that the Court should properly recuse himself because of all the numerous suits that have been filed against me on this case."

The case was then transferred to Judge Kelley.

At trial, the parties stipulated that during 1984 defendant was a resident of Illinois who received in excess of $10,000 in return for work performed for several employers, that he knew of the existence of the Illinois Income Tax Act, and that he did not file an income tax return for that year. The court then took judicial notice of the Federal filing requirement. The State introduced into evidence two certifications of nonfiling wherein the records officer for the State certified that he

found no record that defendant had filed a tax return for 1984, or that defendant applied for an extension of time to file a return.

Terry Ullrich, a former special agent with the Illinois Department of Revenue (Department), stated that when she interviewed defendant concerning his failure to file a tax return, he indicated that he had not filed State or Federal income tax returns since 1978 or 1979, that he knew of the filing requirement and that he had no dependents. She also testified that the income tax defendant owed the State for 1984 was 142.14.

Defendant testified that although he earned more than $10,000 in 1984, he did not file a tax return because he worked "completely under the common law" and was an "unenfranchised common law freeman."

Defendant first argues that that the trial court lacked jurisdiction because his

appeal of the court's finding that he was unfit was pending at the time Judge Urso declared him to be fit and recused himself from the case. We disagree. The unpublished order affirming the trial court's finding that defendant was unfit to stand trial was filed on June 9, 1988. (People v. Brailey (1988), 169 Ill. App. 3d 1169 (unpublished order under Supreme Court Rule 23).) Judge Urso found defendant to be fit for trial and recused himself from the case on May 4, 1989. The fact that the mandate from this court's denial of his appeal from the order finding him unfit had not yet been issued is of no consequence since the record indicates that during the interim defendant had been involuntarily admitted to a mental health facility for treatment designed to render him fit for trial. Subsequently, defendant was determined to be fit. Therefore, the appeal from the order was moot.

Defendant raises two issues that are

based on his misconception that the criminal proceedings that are the subject of this appeal are separate and distinct from the administrative proceedings initiated by the Department. Specifically, defendant alleges that the trial court had a duty to limit its consideration of the matter to the errors occurring at the administrative proceedings; and that the indictment was void because during the administrative proceeding the Department failed to comply with the procedures set forth in the Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1001 et seq.) concerning contested cases, and because the Department lacked jurisdiction over his person.

We note that the record indicates that throughout the proceedings defendant exclusively focused on his mistaken belief that the administrative proceeding took precedence over the instant criminal pro-

ceeding, and that his pleadings in the administrative proceeding demonstrated that not only that the trial court lacked jurisdiction to entertain the criminal indictment lodged against him, but also that he was entitled to judgement in his favor. In any event, we find both issues to be without merit. The proceedings initiated by the Department are civil and administrative in nature. The proceedings that are the subject of this appeal are criminal. Ironically, had the trial court done what defendant argues and reviewed the administrative proceeding, there would have been a valid claim that the court's action was void because it lacked jurisdiction.

The last issue raised by defendant is that the trial court erred in appointing counsel to represent him after he repeatedly informed the court that he wished to proceed pro se. Defendant characterizes defense counsel's conduct as "connivance

and malicious misconduct" which resulted in a denial of his constitutional rights and his fraudulent incarceration in a mental institution. As the State points out in its brief, defendant's claim is based on his misunderstanding that the instant case is merely a continuation and review of the Department's administrative action. In resolving this issue, we are guided by the law that the defendant in a criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so. (Faretta v. California (1975), 422 U.S. 806, 807, 45 L. Ed. 2d 562, 95 S. Ct. 2525.) However, it must be evident from the record that the defendant was literate, competent, and understanding, and that he was voluntarily exercising his informed free will. (Faretta v. California, 422 U.S. at 835.) in affording a defendant these rights, the court is charged with the responsibility to

administer justice without needless delay. (People v. Myles (1981), 86 Ill. 2d 260, 268, 427 N.E.2d 59.) Applying these principles to the instant case, we find that the court did not err in appointing counsel to represent defendant over his objection. The record indicates that when defendant informed the court that he wished to represent himself, the judge questioned defendant to determine his ability to do so. Initially, defendant responded to the questions. However, at some point defendant's answers became nonresponsive with defendant repeating his position that he did not have to pay taxes, that the court lacked jurisdiction or, even if the court had jurisdiction, its role was limited to reviewing the administrative proceeding. It was clear from defendant's refusal to answer the judge's questions that appointment of counsel was necessary to ensure that the trial proceed in a reasonable and

orderly manner. As the court stated:

> "I'm not convinced at this point that you can competantly represent yourself or make a competant decision -- strike that. That you are competant to represent yourself.
>
> I'm taking several factors into consideration. I can see that you have certain ideas in your mind that are not -- your [sic] not capable of putting aside. And although you have had some education through high school and you appear to be at this point at least in my opinion competant the way that you are conducting yourself. The way that you tend to ramble on and have these ideas in your head, it is to me that it would be, your your [sic] behavior would be somewhat distructive [sic] to the orderly conducting of a trial. Be

it either a bench trial or a jury trial.

If I'm going to have trial on this matter, which I assume we eventually will have. I cannot permit someone to conduct a trial in the way I anticipate that your [sic] going to be attempting to conduct that trial. I cannot allow someone to ramble on and speak what they have in their mind, even though it has no relevance or may have no relevance to what is the proceedings that are going on.

I would like to let you represent yourself and I had thought that perhaps I would let you represent yourself because you, again, you appear to be competant, at least in my opinion, at this time.

However, the way that you are

handling yourself, I just cannot allow that type of --

THE DEFENDANT: May I say something?

THE COURT: This is what I'm talking about. I cannot allow a person with your type of behavior because I do believe it would be disruptive to conduct a trial on his own behalf."

Finally, the law provides that the trial court may terminate self-representation when a defendant engages in serious and obstructionist misconduct. (People v. Ward (1991), 208 Ill. App. 3d 1073, 1084, 567 N.E.2d 642.) Although this is usually done only after a defendant has begun to represent himself, it may provide a basis for denying a defendant's motion to proceed pro se in exceptional situations. (People v. Ward, 208 Ill. App. 3d at 1085.) There

does not appear to be a clear guide as to when a situation constitutes an exceptional situation warranting a denial of the motion. In the present case, it is clear from the record that defendant's behavior from the outset of the proceedings was disruptive. Moreover, when the trial court denied defendant's motion it stated, "I cannot allow a person with your type of behavior because I do believe it would be disruptive behavior to conduct a trial on his own behalf." Therefore, it is clear from the record that the court, after having observed defendant's disruptive behavior during several earlier proceedings, was of the opinion that defendant's conduct, if allowed to represent himself, would prevent the trial from proceeding in a reasonably orderly manner without needless delay. We conclude that the court did not err in denying defendant's motion to proceed pro se.

For the reasons stated above, the judgement of the circuit court of Cook County is affirmed.

Affirmed.

JIGANTI, P.J., with LINN and McMORROW, J.J., concurring.

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS	)	
	)	Case No. 86 C-R4373
-VS-	)	
	)	Charge: FAIL. FILE. RET OCC TAX
HUGHES BRAILEY	)	

BENCH TRIAL

REPORT OF PROCEEDINGS of the trial before the Honorable DANIEL J. KELLEY, on the 28th day of August 1989.

Record page no. 523, line 5:

THE COURT: Thank you, Mr. Keenan.

As to the offense charged in the indictment, I first of all find that Mr. Brailey was a resident of the State of Illinois in 1984 and that he was required to file a federal income tax.

I further find that for the -- that his income was in excess of $10,000 which in turn would require that he file an in-

come tax with the State of Illinois also.

I find for the year of 1984 defendant failed to file income tax return with the State of Illinois and by his actions in what has been set forth in this Court that his failure to file was a willful failure to file.

He may believe in his heart this tax is wrong and that he should not be required to file the tax, but the fact still remains that the failure was willful. It is an argument that has been, I believe presented before, a novel argument in theory as to ones obligation to file a state return, but it is not valid and the courts have so held.

I believe the procedure to follow if one does not agree with the taxes and even if the disagreement is deep down in his heart, is to pay the tax with the Department of Revenue and then appeal the tax as to the amount due or as to the constitu-

tionality of the tax, it is not to -- the proper procedure is not to just not pay the tax or to file the return. And I believe Mr. Brailey, from what I have been able to see was aware of this at the time.

So, I am going to enter a finding of guilty as to the offense charged in the indictment, willfully failing to file an income tax return for the year 1984.

The amount due by Mr. Brailey is not really the issue, the amount is minimal, the issue rather is the failure to pay the tax, whatever the amount might be.

Mr. Brailey do you want to approach the bench, please?

We do not have a pre-sentence report.

MS. LUNDBERG: No, judge.

THE COURT: Mr. Brailey, I have entered a finding of guilty, I have to the give you a date for post trial motions.

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff-Appellee,	)	
v.	)	No. 1-89-2894
HUGHES BRAILEY,	)	
Defendant-Appellant.	)	

O R D E R

This cause coming to be heard on the Petition for Rehearing of the Defendant-Appellant, HUGHES BRAILEY, pro se, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that the Petition for Rehearing be denied.

DATED at Chicago, Illinois, this 30th day of January, 1992.

_____
Justice

_____
Justice

_____
Justice

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

June 3, 1992

Mr. Hughes Brailey
532 W. Roscoe St., Apt. 573
Chicago, IL 60657

No. 73310 - People State of Illinois, respondent, v. Hughes Brailey, petitioner. Leave to appeal, Appellate Court, First District

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 25, 1992.

IN THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS

People of Illinois	)	
	)	
	)	
v.	)	No. 86CR-4373
	)	
Hughes N. Brailey, pro se	)	

Defendant's
Motion to Dismiss,
Upon Judicial Review,
Within a Special and Limited Hearing

Summary

I, Hughes Brailey, have challenged and denied jurisdiction for the excise tax on privilege to exist, income tax, at the administrative level. (Chapter 120, section 2-201.) The object of the tax being privilege, of which I do not voluntarily, knowingly, and intentionally participate in any state created franchise. (see copy of my Administrative Law Brief sent to the Department of Revenue and copy of documents filed with the Cook County Recorder's Office denying enfranchisement.) Therefore,

a non-privileged individual not being the object of the tax, is not subject to the tax.

The Illinois law governing this case is the Illinois Administative Procedure Act, Chapter 127, Section 1001 et seq., whereunder I am a "contested case," The Illinois Department of Revenue is subject to this Act, applying to all rules and regulations (i.e. - sanctions, administrative crimes) of the Dept. of Revenue (Chapter 120, Section 14-1408) The Dept. of Revenue has defaulted in my "contested case", but has denied me a default judgement, apparently intent to evade their legal obligations. The charge against me, Failure to File, a Chapter 120 administrative sanction (i.e. - rule or regulation) specifies clearly that it is applicable to only one who is subject (see Chapter 120, Failure to File) The Illinois Administrative Procedure Act, Chapter 127, Section 1014 forbids a deci-

sion or order (i.e. - order for enforcement of a criminal sanction) when an agency's proceedings are not in compliance.

Chapter 127, Section 1011, limits "judicial review of agency's decision" to only facts, data and testimony which appear on the record, findings based on evidence introduced in the case.

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

People of Illinois,	)	
	)	
V.	)	NO. 86CR-4373
	)	
Hughes Brailey, pro se	)	

MOTION FOR JUDICIAL REVIEW

Defendant hereby moves this Court to review the administrative record in accordance with Article III, Chapter 110, in order to determine if agency rule (criminal sanction 120, 13-1301) has been ordered for enforcement in lawful accordance with the Administrative Procedure Act, Chapter 127, 1001 et. seq.s, wherein, an agency decision is "void" (section 1014, final paragraph) if proceedings are not conducted in accordance with aforesaid Act.

Administrative Procedure Act governs criminal sanctions as much as civil charges. See Smith-Hurd's Illinois Revised Statutes, Chapter 127, sect. 1003.09, under

"Notes of Decisions", where "Criminal sanctions 5" is listed.

The Commissioner (Director) of the Department of Revenue is bound by law governing administrative procedure in contested cases where litigation has been introduced at the administrative level, wherein, certain legal requirements MUST be fulfilled BEFORE he is able to lawfully obtain a criminal indictment, especially in contested cases at the administrative level where jurisdiction has been squarely challenged.

Hughes Brailey, pro se

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS	)	
vs.	)	No. 86 CR 4373
HUGHES BRAILEY, pro se Defendant-Petitioner.	)	Daniel J. Kelley, Judge Presiding.

PETITION FOR REVIEW

Defendant Hughes Brailey, pro se, hereby petitions this Court for review of the administrative procedure and adjudication of the Illinois Department of Revenue which procured the charge of failure to file an Illinois Income Tax return (Ill. Rev. Stat. Chapt.120, sect. 13-1301) as a final order in an administrative contested case on the issue of jurisdiction.

Months before he was referred for indictment on the charge of failure to file by the Department of Revenue, Defendant-Petitioner Brailey affirmatively, with

verification/authorities, on the administrative record, pleaded and proved want of jurisdiction by the Department/Illinois Income Tax Act over his person, proving that the natural unenfranchised individual and his rights under the common law are not the object of State and Federal income tax and that under the law he is totally unenfranchised to any State, local or Federal entity. Thereafter, the Department of Revenue defaulted on said issue of jurisdiction, failing to make a prima facie case in support of their pretended jurisdiction and denied Brailey essential due process by failing to render judgement in his favor on the merits of his Administrative Law Brief/Affidavits/Pleadings on the issue of jurisdiction. The said failures by the Department along with their additional failure to hold a formal hearing on said issue of jurisdiction whereby they would have determined the individual Constitu-

tional rights of Brailey, all constitute violations of the Illinois Administrative Procedure Act (Ill. Rev. Stat. chapt. 127, sect. 1001 et. seq.s) which governs procedure of the Department in a contested case and also makes very clear that any adverse agency decision or order in a contested case wherein the agency has failed to follow the provisions of said Act, is VOID.

The Illinois Department of Revenue decision for enforcement of the charge of failure to file was made as a final order in a contested case on the issue of jurisdiction wherein the Department failed to honor/follow the provisions of the Administrative Procedure Act. Ill. Rev. Stat. chapt. 127, sect. 1014 clearly states that a final agency decision in a contested is VOID if the agency has failed to follow the provisions of said Act, therefore the charge against Defendant Brailey of failure to file is therefore VOID and likewise

unenforceable and should be reversed and the issue of jurisdiction settled according to law by having judgement rendered in Defendant Brailey's favor on the merits of his pleadings on the issue of jurisdiction.

This Petition is brought under the 1st Amendment, U.S. Constitutional right to petition government for redress of grievances, and pertinent provisions of the Illinois Administrative Review Act, Ill. Rev. Stat. chapt. 110, Article III (sect. 3-301 et seq.s) and a Brief is also included for briefing purposes if necessary.

WHEREFORE, Defendant-Petitioner Hughes Brailey prays that the relief prayed for in this Petition is granted upon judicial review of the Administrative record in accordance with pertinent provisions of the Administrative Review Act.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies

as aforesaid that he verily believes the same to be true.

Hughes Brailey, pro se
532 W. Roscoe
Apt. 367
Chicago, IL 60657

tel. (312) 248-5279

SUBSCRIBED AND SWORN TO
before me this 31st day
of May 1989.

Notary Public

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

THE PEOPLE OF THE)
STATE OF ILLINOIS)
) No. 86-4373
-vs-) Charge: Failure to file
) Occ. Tax
HUGHES N. BRAILEY)

Before JUDGE JOSEPH J. URSO
May 29th, 1986

Court convened pursuant to continuance.

Record page no. 19, line 2:

THE COURT: You are the attorney of record as far as I'm concerned, but I will allow him to file this motion.

If you wish, don't wish to take part in the hearing on this motion, that's fine, but your client, as far as I'm concerned, has alleged lack of jurisdiction of this Court to hear this matter.

THE DEFENDANT: Only because the agencies, you know, by no fault of the Court, with all sincere respect for the Court--

MR. EPPENSTEIN: Either he has a lawyer or he doesn't. If I am going to be his lawyer, I'm going to--

THE COURT: You are still on the matter.

MR. EPPENSTEIN: I must seek leave to withdraw from the case.

THE COURT: I deny your request to withdraw. Are you ready to proceed or not?

MR. BRAILEY: No, your Honor.

MR. EPPENSTEIN: Judge, I would seek leave to withdraw the petition that was just filed by Mr. Brailey.

THE COURT: The petition will remain on file.

THE DEFENDANT: Thank you, sir.

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

THE PEOPLE OF THE) No. 86-CR-4373
STATE OF ILLINOIS)
) Before HON. JOSEPH J.
) URSO
vs.)
) June 12, 1986
)
HUGHES N. BRAILEY)

Court convened pursuant to adjournment.

Record page no. 39, line 1:

....., a decision by any agency in a contested case under this Act shall be void unless the proceedings with regard to the administrative procedure are conducted in compliance with the provisions of this Act.

THE COURT: All right, thank you. I am familiar with that section, and I think that I am familiar with the law, the state income tax law.

The Court feels that the Motion to Dismiss has no merit, the Court feels that

it is proper, the case is properly before this Court, the Court has jurisdiction over the case and also over the defendant. The defendant is here, the case is properly filed, it is not necessary for the government to proceed administratively on this before they proceed in filing criminal sanctions. There is a violation, there is a criminal violation, willfully failing to file an income tax, that gives jurisdiction to this Court.

Many of the matters that you are citing may, in fact, be defenses you wish to bring up, but as far as the law is concerned, as far as my understanding of the law, the Motion to Dismiss does not have merit and the Motion to Dismiss will be denied.

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

THE PEOPLE OF THE)
STATE OF ILLINOIS)
) Indictment No. 86-4373
VS)
) Charge: Failure to File
HUGHES N. BRAILEY)

REPORT OF PROCEEDINGS had at the hearing in the above-entitled cause, on the 6th day of April A.D. 1987, before the HONORABLE JOSEPH J. URSO, Judge of the Criminal Division.

Record page no. 106, line 1:

MR. VENIT: I Believe the first doctor was Dr. Stipes?

THE COURT: Yes.

THE DEFENDANT: This is supposed to be a review. It is like appellate procedure. It is in the motion, verification for it.

THE COURT: Mr. Brailey, I understand what you are trying to say. What I am tel-

ling you is we must resolve -- before we can resolve anything else, the question of whether you are fit to stand trial or not. I have before me letters --

THE DEFENDANT: Judicial --

THE COURT: Please be quiet -- from two different psychiatrists that indicate that they are of the opinion after examining you that you are not fit to stand trial.

THE DEFENDANT: You are not to hold trial over me. Judicial review. If you read this, you are suppose to provide a certiorari of the administrative record before being able to hold trial. You are suppose to search and file administrative --

THE COURT: That is not my position. You have been charged --

THE DEFENDANT: You disagree with my contention.

THE COURT: Absolutely.

THE DEFENDANT: I am not going to argue with it. I have to get a Writ of Mandamus

from the Appellate Court.

THE COURT: We will first assertain whether you are fit to proceed.

THE DEFENDANT: There is no jurisdiction of this Court to have -- to hold trial for this criminal sanction. I am not subject to the Illinois Income Act. That is my contention. You can't even hold trial. You are suppose to maintain judicial review proper. That is why I have motioned for judicial review, even though it is civil. That is quasi --

THE COURT: We are waiting for the doctors to be available. I must assertain whether you are fit before we proceed any further, sir.

THE DEFENDANT: On the motion for judicial review, I guess next I appear on my motion for judicial review after you consider the authorities cited. I do want an order, either way. .....

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS	)	
v.	)	NO. 86 CR 4373
HUGHES BRAILEY, pro se	)	

OBJECTIONS
TO PUBLIC DEFENDER BEING FORCED UPON
DEFENDANT

Defendant Hughes N. Brailey has a clear right to counsel of his own choice.

Former public defender David Eppenstein stated to Defendant Brailey, early in the proceeding, that Judge Urso does not allow defendants to appear pro se, yet Chapter 110A, Supreme Court Rule 401 (a) (3) provides for court appointment of counsel only when a defendant is indigent, and Defendant Brailey is not indigent, being employed full time, and not on any form of State assistance. However, Defendant Brailey cannot afford an atorney who is competant in this case involving administrative law, yet the worst, most harmful form of counsel for

his Constitutional stand barring unlawful taxation by the State, is a public defender who subsists on State revenue with their interests running in favor of the State.

The public defenders, likewise, have exhibited not only ignorance and incompetance with regard to the law, but also hostility to it, and have caused Defendant Brailey only injury and grief, aiding the Illinois Department of Revenue to deny him the right of administrative review, a gross civil rights violation. (Essential due process, the right of appeal, 1st Amendment, U.S. Constitution).

The injustice and grief of causing Defendant Brailey to go through other State financed agencies whose interests run against his case, the psychiatric agencys, have resulted from his demand for administrative review being labeled as being "uncooperative" with their false unlawful assertions, and psychiatric treatment is

irrelevant and immaterial to the right of administrative (judicial) review.

WHEREFORE, Defendant Hughes Brailey moves the Court to vacate the forced appointment of the public defenders upon his person.

Respectfully,

Hughes Brailey, pro se
532 W. Roscoe
Chicago, IL 60657

(Transcript - record page No. 446), before Judge Urso:

"DEFENDANT BRAILEY: I don't know if the assistant State's attorney has shown you like an unfitness order is a final order for appeals purposes, you know. Its Chapter 38, Section 104-16. ....."